

1 to offer, your Honor.

2 Defense rests, and thank you for your time and
3 patience.

4 THE COURT: Thank you.

5 All right. Ladies and gentlemen of the Jury, we
6 come to that point in time where the attorneys for the
7 respective parties will be given an opportunity to make
8 their closing statements. As I instructed you initially,
9 remembering that the arguments of the attorney's are not
10 evidence.

11 On behalf the of Defendant, Waldo J. Vargas, we
12 have Counsel --

13 MR. LEONE: Frank Leone.

14 THE COURT: Frank Leone.

15 Thank you, very much.

16 MR. LEONE: Good afternoon, ladies and gentlemen.

17 On behalf of Waldo Vargas, I want to thank you for
18 your service and patience and attention to this matter so
19 far. Now is the time in the process where you have to
20 answer some questions that will be submitted to you on a
21 verdict sheet. And I ask that do not answer the questions
22 based on sympathy but, rather, based on what has been
23 proven to you or what has not been proven to you.

24 The first questions have to do with economic loss
25 by Ms. Espinal and her other daughter. And you heard

1 testimony from Ms. Espinal that her daughter, Elvia, gave
2 the household about two-hundred dollars -- a couple of
3 hundred per month and that she anticipated that her
4 daughter would be living with her for another three years.

5 But I submit to you that the money that was given
6 to the household was not given to support her mother or her
7 sister but, rather, was for her living expenses, for her
8 room and board. She was an adult; she was twenty-two years
9 old and she didn't have a place of her own.

10 As far as the funeral expenses, which you will
11 also be asked to award an amount for, you haven't received
12 anything in the way of receipts or bills for your
13 consideration so you don't know what to consider as far as
14 funeral expenses. That hasn't been proven to you through
15 any documents of any kind.

16 As far as the conscious pain and suffering, which
17 you may or may not award for, the only indication in all of
18 the records, all of the medical recordings, all of the
19 exhibits that you have seen, was that the patient was
20 unconscious -- or unresponsive to pain. Even though she
21 had made some sounds, there was nothing; no level of
22 consciousness that was demonstrated to you, and that would
23 be consistent with her Glasgow score of 4 at the scene, and
24 5 later on at the hospital, if that's what it was which is
25 consistent -- as Dr. Manion agreed with me, consistent with

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SUMMATIONS - MR. CERVINI

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1 a severe brain injury.

2 And there was no contrary credible evidence by Dr.
3 Manion offered by him yesterday, nothing to the contrary
4 that was credible.

5 As far as punitive damages, which is the last
6 question that we ask for, I ask that you not penalize or
7 punish the Defendant monetarily for something he's already
8 being punished for criminally.

9 Thank you.

10 THE COURT: Thank you, Mr. Leone.

11 On behalf of the Plaintiff's, Counsel Michael
12 Cervini.

13 MR. CERVINI: Your Honor, thank you, very much,
14 the Court personnel, Mr. Defense Attorney, Ysidra, most
15 importantly, ladies and gentlemen of Elvia Collado's jury,
16 I'm going to take a little more time with you to talk to
17 you about what you have heard and what you know about
18 Elvia. I kind of breezed through my opening statement, if
19 you will, because I had to get Mr. Jean-Noel on the stand
20 because I didn't think he could come in the afternoon, so
21 I'm going to try to speak much slower and in much greater
22 detail.

23 This case, in an accident case, in an injury case,
24 normally you have a person -- you have a person that can
25 come to court and tell you what they have experienced in an

1 accident, in their injury, and we don't have that in this
2 case. We normally have it in a case. Elvia would have
3 taken the stand and testified to you as to who she was.
4 But she can't. She was killed. And, yes, there was a
5 criminal prosecution. And, yes, first, when we were
6 talking across the street last week, I have to kind of
7 bring this up, is that I want to explain to you, there was
8 a person there who felt a certain way, that there was no --
9 there was no point in what we're doing here. That doesn't
10 accomplish anything. There is a criminal justice system in
11 our state, in this county, and there is a civil justice
12 system.

13 Elvia Collado and her mom and her family, they
14 don't bring the criminal prosecution, they are not
15 compensated by the District Attorney's office in the
16 prosecution of that criminal case. I read to you the
17 transcript of his allocution and his plea of guilty to
18 vehicular manslaughter for causing her death. You see the
19 caption: The People of the State of New York against the
20 Defendant. It's a criminal prosecution. The mother has no
21 right to bring that case in Criminal Court. There is no
22 compensation for Elvia or the family that's left behind as
23 a result of this criminal prosecution. This is their only
24 opportunity to come into this building, the way any of us
25 have, as citizens, as we said, in the civil justice system.

1 This is the civil justice system, to say 'What
2 happened to me or us is wrong'. And there are two things
3 that are going on here: One, substantially more important
4 and significant than the economic loss to the mom and the
5 sister, but there is Elvia. Elvia has the right -- or
6 would have the right to come in front of you and say, 'For
7 that period of time that this car that I was a belted
8 passenger in smacked into the back of another car, careened
9 off a barrier, traveled three lanes of traffic into the
10 side of the road in the middle of the night and impacted a
11 tree'.

12 The thing that might be going through somebody's
13 mind when that's happening, and then the injuries and the
14 suffering that you go through knowing you potentially are
15 about to die as a result of that, the only reason she can't
16 be here to explain to you what that must be like is because
17 she did die. And I'm going to try as an adequate as I'm
18 sure, as adequately as I'm going to articulate it, to talk
19 to you about not just pulling it out of mid-air, I'm going
20 to talk to you about the evidence.

21 You know, this is not a one-way street, a civil
22 trial. The Defendant has an attorney; he has a law firm
23 defending him. If -- Mr. Leone is an experienced defense
24 attorney. If one thing that Dr. Manion, with his
25 credentials, said was untrue or false about that this girl

1 didn't suffer the thirty-five minutes, forty minutes, fifty
2 minutes, does it really make a difference either way?

3 If that doctor, with his credentials, said one
4 thing that was false or incorrect from a medical
5 standpoint, he has the absolute right to call his own
6 doctor to the witness stand to dispute that. Did he do it?
7 Why not? Because what Dr. Manion is saying to you is the
8 truth. If he had one witness to say that Elvia was
9 unconscious, show me in the hospital record, because you
10 are entitled to look at the entire hospital records -- it's
11 in evidence in the court -- saying 'Unconscious, comatose'.
12 Do you think the medical people in the hospital have some
13 agenda? Think about it.

14 The EMS record, which is also in evidence, the
15 blood pressure is there, the pulse is there, the Glasgow
16 score is there. If that Glasgow score with Dr. Manion is
17 telling you about is true, then at 5, you have a level of
18 consciousness that you are aware of and you are kind of in
19 a state of stupor.

20 If Sean Overstreet, who came in here, a good
21 Samaritan -- I didn't subpoena Sean Overstreet. I didn't
22 subpoena Jean-Noel to be here. They knew they had to be
23 here because they knew the significance of what had
24 happened that night. And if what they said wasn't true, if
25 Sean Overstreet said -- what did he say? "I pulled her

1 head back, and she was making sounds". If that was untrue,
2 there was something contradictory that they have the right
3 to call a witness.

4 If the information on the EMS report, which those
5 people are fighting to save her life, is incorrect, that --
6 that she has no pulse, that she is comatose, that she is
7 unconscious, they would write that down. They didn't.

8 In fact, if you look at the sheet which Dr. Manion
9 -- part of the hospital record, you are more than entitled
10 to bring it -- ask for it. They get into the hospital --
11 think about it -- EMS record the Glasgow scores as 4 in the
12 bottom of the sheet. They get her to the hospital, it's 5.
13 She is improving. Her blood pressure is normal, all
14 rising. This girl is fighting for her life.

15 If this is not true medical, let them call the
16 doctor to tell us it's not. They have the absolute right
17 to do it. If what these witnesses said that night is not
18 true, let them call some other witness.

19 Where is the Defendant?

20 She got to the hospital and she lasted until
21 about, in terms of, she died at 3:45. She was pronounced
22 dead at 3:45 after the separation of -- but we know the
23 doctor was honest enough to tell us that about five minutes
24 to 2, they take her to the OR and they give her medication
25 to put her to sleep so that she can potentially survive the

1 operation. So, we're talking about the time of accident of
2 about 1 o'clock, five minutes to 1 to almost 2 o'clock.

3 I'm not asking for your sympathy on behalf of
4 Elvia, but I am asking for your understanding. I'm asking
5 for you to understand and think about what it must be like
6 to go through what she went through for that one hour.

7 And this is a girl -- you know, the Judge is going
8 to talk to you about how you evaluate witnesses or what you
9 take into account when it comes to the type of people
10 involved in this case like Elvia Collado. My God, is a
11 girl that did everything right in her life. She is
12 twenty-two years old, she is finishing her last year at
13 night, at Hunter College, for psychology. She is working
14 full time, she is making twice as what she is making. Her
15 mother -- she is living at home, contributing to the
16 household.

17 Here's a girl that's doing everything right. Why
18 isn't it just as possible she is tired -- you know, how the
19 defense attorney asked questions about the mother, she was
20 tired so she let the boyfriend drive. And isn't it
21 possible -- isn't it just as possible that she could have
22 been sleeping and her first knowledge of this accident is
23 when the car, at a hundred miles an hour, impacts the back
24 of Mr. Jean-Noel's car and then careens off the barrier,
25 then travels, that's what maybe potentially woke her up?

1 And what she goes through for those last couple of
2 split-seconds until she impacts the side of the tree on her
3 side.

4 Read the record. They had to extricate her, the
5 Fire Department had to extricate her from the car. If
6 there was some proof in that hospital record that she was
7 comatose, or unconscious, it would be there. It's not.

8 I mean, this girl went through a horrific
9 experience before she died. And what I want to say to you
10 is this: Pretty much, at the end, well, is that you have
11 to make a decision, because I remember thinking once we got
12 started last week with this case, at some point I'm going
13 to come in front of you and try to ask you to understand
14 and put a value on that hour of her life, for 45 minutes of
15 her life. I don't know how you do it. I'm fortunate that
16 I don't have to do it. Is it a million dollars? Is it
17 half a million dollars? I don't know, I leave that to you.

18 But I do know one thing, that I don't think any of
19 us in this room, as rational, reasonable people would say
20 that what this girl went through for that hour is
21 insignificant. It's horrific in its magnitude for anybody.
22 And your verdict, I think, has to acknowledge that because
23 to not acknowledge it would be to minimize it. And to
24 minimize what this girl went through for that hour would be
25 the wrong thing to do. And not giving her -- not so much

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1 the family: Her. It's her time for that hour. Not giving
2 her justice from that civil justice system -- my, God, the
3 toxicologist record; the girl didn't have one drop of
4 alcohol in her system, and the Defendant pleads guilty to
5 vehicular manslaughter. And the only testimony in the case
6 is that he is driving a hundred miles miles an hour.

7 And I think there should be some award in addition
8 to the conscious pain and suffering of significance, maybe
9 along the timelines that I have suggested to you, in some
10 amount of punitive damage to discourage that kind of
11 conduct; to recognize that kind of conduct in terms of the
12 indifference that he showed to her life that night.

13 That's the justice that we seek in this civil
14 justice system on her behalf. Not too much on behalf of
15 the mom and the sister, but her. It's Elvia's case. For
16 that one hour or forty-five minutes, or five minutes in any
17 direction, depending on what you decide, I think your
18 verdict should be of significance because her suffering for
19 that amount of period was of significance.

20 Thank you.

21 THE COURT: Thank you, Mr. Cervini.

22 COURT CLERK: At this time, the Court is going to
23 charge the jury on the law. During the course of the
24 charge, the courtroom door shall be locked; no one will be
25 allowed to enter or leave.